

AMENDED IN ASSEMBLY MARCH 26, 2003

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 949**

**Introduced by Assembly Member Pavley**  
(Principal coauthor: Senator Dunn)

February 20, 2003

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An act to amend Section 803 of the Penal Code, relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 949, as amended, Pavley. Criminal procedure: limitations of time.

Under existing law, there are various specified limitations of time after which complaints or indictments may not be filed against defendants. Existing statutes permit those limitations of time to be extended or waived for various specified reasons, sometimes retroactively. In particular, one provision allows a complaint to be filed within a year of the date a person reports to a California law enforcement agency that he or she was a victim prior to 1994 of specified sexual conduct as a minor, if the otherwise applicable limitation of time has expired, the allegation is corroborated, and other conditions are satisfied. A 2nd provision permits the filing of a criminal complaint within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she was the victim as a minor of one of a specified set of sex crimes,

if the otherwise applicable statute of limitations has expired, and the allegation is corroborated.

With regard to these 2 circumstances, this bill would toll the limitation of time for the length of any period of litigation that challenges grand jury subpoenas ~~or search warrants~~ issued with respect to child sexual abuse allegations, including any associated writ or appellate proceedings, until the end of that litigation or until the disclosure of evidence pursuant to the subpoena ~~or warrant~~ after the litigation. *This bill would also state that this tolling does not affect the definition or applicability of any evidentiary privilege, and does not apply to a grand jury subpoena found by a court to be issued or caused to be issued in bad faith.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 803 of the Penal Code is amended to  
2 read:  
3 803. (a) Except as provided in this section, a limitation of  
4 time prescribed in this chapter is not tolled or extended for any  
5 reason.  
6 (b) No time during which prosecution of the same person for  
7 the same conduct is pending in a court of this state is a part of a  
8 limitation of time prescribed in this chapter.  
9 (c) A limitation of time prescribed in this chapter does not  
10 commence to run until the discovery of an offense described in this  
11 subdivision. This subdivision applies to an offense punishable by  
12 imprisonment in the state prison, a material element of which is  
13 fraud or breach of a fiduciary obligation, the commission of the  
14 crimes of theft or embezzlement upon an elder or dependent adult,  
15 or the basis of which is misconduct in office by a public officer,  
16 employee, or appointee, including, but not limited to, the  
17 following offenses:  
18 (1) Grand theft of any type, forgery, falsification of public  
19 records, or acceptance of a bribe by a public official or a public  
20 employee.  
21 (2) A violation of Section 72, 118, 118a, 132, or 134.



(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child

1 under 18 years of age that the child is a victim of a crime described  
2 in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

3 (2) For purposes of this subdivision, a “responsible adult” or  
4 “agency” means a person or agency required to report pursuant to  
5 Section 11166. This subdivision applies only if both of the  
6 following occur:

7 (A) The limitation period specified in Section 800 or 801 has  
8 expired.

9 (B) The defendant has committed at least one violation of  
10 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same  
11 victim within the limitation period specified for that crime in either  
12 Section 800 or 801.

13 (3) (A) This subdivision applies to a cause of action arising  
14 before, on, or after January 1, 1990, the effective date of this  
15 subdivision, and it shall revive any cause of action barred by  
16 Section 800 or 801 if any of the following occurred or occurs:

17 (i) The complaint or indictment was filed on or before January  
18 1, 1997, and it was filed within the time period specified in this  
19 subdivision.

20 (ii) The complaint or indictment is or was filed subsequent to  
21 January 1, 1997, and it is or was filed within the time period  
22 specified within this subdivision.

23 (iii) The victim made the report required by this subdivision to  
24 a responsible adult or agency after January 1, 1990, and a  
25 complaint or indictment was not filed within the time period  
26 specified in this subdivision, but a complaint or indictment is filed  
27 no later than 180 days after the date on which either a published  
28 opinion of the California Supreme Court, deciding whether  
29 retroactive application of this section is constitutional, becomes  
30 final or the United States Supreme Court files an opinion deciding  
31 the question of whether retroactive application of this subdivision  
32 is constitutional, whichever occurs first.

33 (iv) The victim made the report required by this subdivision to  
34 a responsible adult or agency after January 1, 1990, and a  
35 complaint or indictment was filed within the time period specified  
36 in this subdivision, but the indictment, complaint, or subsequently  
37 filed information was dismissed, but a new complaint or  
38 indictment is or was filed no later than 180 days after the date on  
39 which either a published opinion of the California Supreme Court,  
40 deciding whether retroactive application of this section is

1 constitutional, becomes final or the United States Supreme Court  
2 files an opinion deciding the question of whether retroactive  
3 application of this subdivision is constitutional, whichever occurs  
4 first.

5 (B) (i) If the victim made the report required by this  
6 subdivision to a responsible adult or agency after January 1, 1990,  
7 and a complaint or indictment was filed within the time period  
8 specified in this subdivision, but the indictment, complaint, or  
9 subsequently filed information was dismissed, a new complaint or  
10 indictment may be filed notwithstanding any other provision of  
11 law, including, but not limited to, subdivision (c) of Section 871.5  
12 and subdivision (b) of Section 1238.

13 (ii) An order dismissing an action filed under this subdivision,  
14 which is entered or becomes effective at any time prior to 180 days  
15 after the date on which either a published opinion of the California  
16 Supreme Court, deciding the question of whether retroactive  
17 application of this section is constitutional, becomes final or the  
18 United States Supreme Court files an opinion deciding the  
19 question of whether retroactive application of this subdivision is  
20 constitutional, whichever occurs first, shall not be considered an  
21 order terminating an action within the meaning of Section 1387.

22 (iii) Any ruling regarding the retroactivity of this subdivision  
23 or its constitutionality made in the course of the previous  
24 proceeding, including any review proceeding, shall not be binding  
25 upon refiling.

26 (g) (1) Notwithstanding any other limitation of time described  
27 in this chapter, a criminal complaint may be filed within one year  
28 of the date of a report to a California law enforcement agency by  
29 a person of any age alleging that he or she, while under the age of  
30 18 years, was the victim of a crime described in Section 261, 286,  
31 288, 288a, 288.5, 289, or 289.5.

32 (2) This subdivision applies only if both of the following occur:

33 (A) The limitation period specified in Section 800 or 801 has  
34 expired.

35 (B) The crime involved substantial sexual conduct, as  
36 described in subdivision (b) of Section 1203.066, excluding  
37 masturbation that is not mutual, and there is independent evidence  
38 that clearly and convincingly corroborates the victim's allegation.  
39 No evidence may be used to corroborate the victim's allegation  
40 that otherwise would be inadmissible during trial. Independent

1 evidence does not include the opinions of mental health  
2 professionals.

3 (3) (A) This subdivision applies to a cause of action arising  
4 before, on, or after January 1, 1994, the effective date of this  
5 subdivision, and it shall revive any cause of action barred by  
6 Section 800 or 801 if any of the following occurred or occurs:

7 (i) The complaint or indictment was filed on or before January  
8 1, 1997, and it was filed within the time period specified in this  
9 subdivision.

10 (ii) The complaint or indictment is or was filed subsequent to  
11 January 1, 1997, and it is or was filed within the time period  
12 specified within this subdivision.

13 (iii) The victim made the report required by this subdivision to  
14 a law enforcement agency after January 1, 1994, and a complaint  
15 or indictment was not filed within the time period specified in this  
16 subdivision, but a complaint or indictment is filed no later than 180  
17 days after the date on which either a published opinion of the  
18 California Supreme Court, deciding the question of whether  
19 retroactive application of this subdivision is constitutional,  
20 becomes final or the United States Supreme Court files an opinion  
21 deciding the question of whether retroactive application of this  
22 subdivision is constitutional, whichever occurs first.

23 (iv) The victim made the report required by this subdivision to  
24 a law enforcement agency after January 1, 1994, and a complaint  
25 or indictment was filed within the time period specified in this  
26 subdivision, but the indictment, complaint, or subsequently filed  
27 information was dismissed, but a new complaint or indictment is  
28 filed no later than 180 days after the date on which either a  
29 published opinion of the California Supreme Court, deciding the  
30 question of whether retroactive application of this subdivision is  
31 constitutional, becomes final or the United States Supreme Court  
32 files an opinion deciding the question of whether retroactive  
33 application of this subdivision is constitutional, whichever occurs  
34 first.

35 (B) (i) If the victim made the report required by this  
36 subdivision to a law enforcement agency after January 1, 1994,  
37 and a complaint or indictment was filed within the time period  
38 specified in this subdivision, but the indictment, complaint, or  
39 subsequently filed information was dismissed, a new complaint or  
40 indictment may be filed notwithstanding any other provision of



1 law, including, but not limited to, subdivision (c) of Section 871.5  
2 and subdivision (b) of Section 1238.

3 (ii) An order dismissing an action filed under this subdivision,  
4 which is entered or becomes effective at any time prior to 180 days  
5 after the date on which either a published opinion of the California  
6 Supreme Court, deciding the question of whether retroactive  
7 application of this section is constitutional, becomes final or the  
8 United States Supreme Court files an opinion deciding the  
9 question of whether retroactive application of this subdivision is  
10 constitutional, whichever occurs first, shall not be considered an  
11 order terminating an action within the meaning of Section 1387.

12 (iii) Any ruling regarding the retroactivity of this subdivision  
13 or its constitutionality made in the course of the previous  
14 proceeding, by any trial court or any intermediate appellate court,  
15 shall not be binding upon refiling.

16 (h) (1) Notwithstanding any other limitation of time described  
17 in this chapter, a criminal complaint may be filed within one year  
18 of the date of a report to a California law enforcement agency by  
19 a person under 21 years of age, alleging that he or she, while under  
20 18 years of age, was the victim of a crime described in Section 261,  
21 286, 288, 288a, 288.5, 289, or 289.5.

22 (2) This subdivision applies only if both of the following occur:

23 (A) The limitation period specified in Section 800 or 801 has  
24 expired.

25 (B) The crime involved substantial sexual conduct, as  
26 described in subdivision (b) of Section 1203.066, excluding  
27 masturbation that is not mutual, and there is independent evidence  
28 that corroborates the victim's allegation. No evidence may be used  
29 to corroborate the victim's allegation that otherwise would be  
30 inadmissible during trial. Independent evidence does not include  
31 the opinions of mental health professionals.

32 (3) This subdivision applies to a cause of action arising before,  
33 on, or after January 1, 2002, the effective date of this subdivision,  
34 and it shall revive any cause of action barred by Section 800 or 801  
35 if the complaint or indictment was filed within the time period  
36 specified by this subdivision.

37 (i) (1) Notwithstanding the limitation of time described in  
38 Section 800, the limitations period for commencing prosecution  
39 for a felony offense described in subparagraph (A) of paragraph  
40 (2) of subdivision (a) of Section 290, where the limitations period



1 set forth in Section 800 has not expired as of January 1, 2001, or  
2 the offense is committed on or after January 1, 2001, shall be 10  
3 years from the commission of the offense, or one year from the  
4 date on which the identity of the suspect is conclusively  
5 established by DNA testing, whichever is later, provided,  
6 however, that the one-year period from the establishment of the  
7 identity of the suspect shall only apply when either of the  
8 following conditions is met:

9 (A) For an offense committed prior to January 1, 2001,  
10 biological evidence collected in connection with the offense is  
11 analyzed for DNA type no later than January 1, 2004.

12 (B) For an offense committed on or after January 1, 2001,  
13 biological evidence collected in connection with the offense is  
14 analyzed for DNA type no later than two years from the date of the  
15 offense.

16 (2) In the event the conditions set forth in subparagraph (A) or  
17 (B) of paragraph (1) are not met, the limitations period for  
18 commencing prosecution for a felony offense described in  
19 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
20 290, where the limitations period set forth in Section 800 has not  
21 expired as of January 1, 2001, or the offense is committed on or  
22 after January 1, 2001, shall be 10 years from the commission of the  
23 offense.

24 (3) For purposes of this section, “DNA” means  
25 deoxyribonucleic acid.

26 (j) For any crime, the proof of which depends substantially  
27 upon evidence that was seized under a warrant, but which is  
28 unavailable to the prosecuting authority under the procedures  
29 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
30 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
31 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
32 claims of evidentiary privilege or attorney work product, the  
33 limitation of time prescribed in this chapter shall be tolled from the  
34 time of the seizure until final disclosure of the evidence to the  
35 prosecuting authority. Nothing in this section otherwise affects the  
36 definition or applicability of any evidentiary privilege or attorney  
37 work product.

38 (k) (1) In a criminal investigation involving child sexual abuse  
39 as described in subdivision (g) or (h), when the limitations period  
40 set forth therein has not expired, that period shall be tolled from



1 the time a party initiates litigation challenging a grand jury  
2 subpoena ~~or search warrant~~ until the end of that litigation,  
3 including any associated writ or appellate proceeding, or until the  
4 final disclosure of evidence to the investigating or prosecuting  
5 agency, if that disclosure is ordered pursuant to the subpoena ~~or~~  
6 ~~warrant~~ after the litigation.

7 *(2) Nothing in this subdivision affects the definition or*  
8 *applicability of any evidentiary privilege.*

9 *(3) This subdivision shall not apply where a court finds that the*  
10 *grand jury subpoena was issued or caused to be issued in bad faith.*

11 *(l) As used in subdivisions (f), (g), and (h), Section 289.5 refers*  
12 *to the statute enacted by Chapter 293 of the Statutes of 1991*  
13 *relating to penetration by an unknown object.*

14 SEC. 2. This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety  
16 within the meaning of Article IV of the Constitution and shall go  
17 into immediate effect. The facts constituting the necessity are:

18 In order that prolonged litigation of procedural matters and  
19 dilatory tactics during investigation do not interfere with the  
20 prosecution of child abuse and neglect cases, it is necessary that  
21 this bill take effect immediately.

